

Respondent.

[Resolving 05-135 Doc. Nos. [38](#), 41-44]
[Resolving 07-679 Doc. No. [1-1](#)]

The Federal Magistrates Act requires a district court to conduct a *de novo* review only of those portions of a Report and Recommendation to which the parties have made an objection. [28 U.S.C. § 636\(b\)\(1\)\(C\)](#). Parties must file any objections to a Report and Recommendation within ten days of service. *Id.* Failure to object within this time waives a party’s right to appeal the magistrate

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judge's recommendation. FED. R. CIV. P. 72(a); *see also Thomas v. Arn*, 474 U.S. 140, 145 (1985); *United States v. Walters*, 638 F.2d 947, 949-50 (6th Cir. 1981). Absent objections, a district court may adopt the magistrate's report without review. *See Thomas*, 474 U.S. at 149. Moreover, having conducted its own review of the parties' briefs on the issue, the Court agrees with the conclusions of the Magistrate Judge.

In his Report and Recommendation, Magistrate Judge Limbert's Report informed parties' of the 10 day objection period. [Doc. 48.] Here, more than ten days have passed since Magistrate Judge Limbert filed his Report and Recommendation. Neither party has objected.

This Court has conducted its own review of the parties' briefs on the issue and agrees with the conclusions of Magistrate Judge Limbert and adopts the Report and Recommendation as its own. Therefore, the Court incorporates Magistrate Judge Limbert's findings of fact and conclusions of law fully herein by reference. Accordingly, the Court denies the Petitioner's § 2255 motion.

For the reasons discussed above, the Court **ADOPTS** the Report and Recommendation of the Magistrate Judge and **DENIES** the Petitioner's motion to vacate, set aside, or correct his sentence pursuant to 28 U.S.C. § 2255.

Further, this Court certifies under 28 U.S.C. § 1915(a)(3), that an appeal from this decision could not be taken in good faith, and that there is no basis upon which to issue a certificate of appealability. 28 U.S.C. § 2253(c); FED. R. APP. P 22(b).

IT IS SO ORDERED.

Dated: November 20, 2008

s/ James S. Gwin
JAMES S. GWIN
UNITED STATES DISTRICT JUDGE